

COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

ORIGINAL

22
Arizona Corporation Commission
DOCKETED

DATE: November 5, 2004

NOV - 5 2004

DOCKET NO: W-01737A-04-0502

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TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

**NEW RIVER UTILITY COMPANY
(CC&N EXTENSION)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

NOVEMBER 15, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

NOVEMBER 23 AND 24, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 NEW RIVER UTILITY COMPANY FOR AN
10 EXTENSION OF ITS EXISTING CERTIFICATE
11 OF CONVENIENCE AND NECESSITY IN
12 MARICOPA COUNTY, ARIZONA.

DOCKET NO. W-01737A-04-0502

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING: October 6, 2004

10 PLACE OF HEARING: Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

12 APPEARANCES: FENNEMORE CRAIG, by Patrick Black, on
13 behalf of New River Utility Company; and

14 Mr. David Ronald, Staff Attorney, Legal
15 Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

16 **BY THE COMMISSION:**

17 On July 9, 2004, New River Utility Company ("Company" or "Applicant"), filed with the
18 Arizona Corporation Commission ("Commission") an application for an extension of its Certificate
19 of Convenience and Necessity ("Certificate") to provide public water utility service to various parts
20 of Maricopa County, Arizona.

21 On August 9, 2004, the Commission's Utilities Division ("Staff") issued a notice that the
22 application had met the sufficiency requirements of A.A.C. R14-2-411(C).

23 On August 10, 2004, by Procedural Order, a hearing was scheduled for September 30, 2004,
24 after which the Company filed certification that it had provided notice of the application and hearing
25 in accordance with the Commission's Procedural Order.

26 On September 15, 2004, Staff filed its Staff Report.

27 On September 29, 2004, the Company filed a Motion to Continue ("Motion") the hearing
28 without objection.

1 On September 30, 2004, by Procedural Order, the hearing was continued to October 6, 2004.

2 On October 6, 2004, a full public hearing was convened before a duly authorized
3 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Company and
4 Staff appeared with counsel. At the conclusion of the hearing, the matter was taken under
5 advisement pending submission of a Recommended Opinion and Order to the Commission.

6 * * * * *

7 Having considered the entire record herein and being fully advised in the premises, the
8 Commission finds, concludes, and orders that:

9 **FINDINGS OF FACT**

10 1. Pursuant to authority granted by the Commission in Decision No. 33131 (May 24,
11 1961), the Company is an Arizona corporation which is engaged in the business of providing water
12 service to approximately 2,575 customers in the City of Peoria ("Peoria"), Maricopa County,
13 Arizona.

14 2. On July 9, 2004, the Company filed an application for an extension of its Certificate in
15 various parts of Maricopa County to provide service to an area which is described in Exhibit A,
16 attached hereto and incorporated herein by reference.

17 3. Notice of the application was provided in accordance with the law.

18 4. On August 9, 2004, Staff filed its Staff Report recommending approval of the
19 application.

20 5. On August 10, 2004, the Commission issued Decision No. 67164 which authorized an
21 extension of the Company's Certificate in Docket No. W-01737A-04-0274 and ordered the Company
22 to file, within 90 days of the effective date of the Decision, or by December 31, 2004, whichever
23 came first, with the Utilities Division Director ("Director"), its arsenic treatment plan because two of
24 its four wells slightly exceed the new maximum contaminant level for arsenic effective in January
25 2006 of 10 parts per billion ("ppb").¹ The Company is in the process of preparing its report which it
26 plans to file by November 10, 2004.

27
28 ¹ One well is at 14 ppb and the other is at 16 ppb.

1 6. As the result of a Maricopa County Environmental Service Department ("MCESD")
2 enforcement action², the Company's witness indicated that the Company has stipulated to pay a
3 financial penalty of \$15,000 which will be paid shortly after the hearing in this proceeding.

4 7. The Company has been requested to provide water service to approximately 53
5 additional acres of land consisting of two separate, but adjacent parcels to be developed as Cody
6 Farms and Riverstone Estates. Cody Farms encompasses 20 acres to be developed into 66 residential
7 lots and Riverstone Estates encompasses 33 acres to be developed into 101 residential lots. The
8 requested extension area is contiguous to Applicant's existing service area along its eastern boundary.

9 8. Applicant projects that future customer growth will result in approximately 167
10 residential connections in the area described in Exhibit A within two to three years.

11 9. To provide its present customers with service, Applicant uses four existing wells with
12 a production capacity of 2,825 gallons of water per minute ("GPM") and 3,000,000 gallons of storage
13 capacity. However, Applicant has total capacity of approximately 4,500 GPM if all six of its wells
14 are utilized to provide service. These facilities are adequate to provide service to existing customers
15 and to all of the prospective customers in the extension area described in Exhibit A.

16 10. To meet the needs of its expanding service area, Applicant is also planning the
17 addition of eight and six inch distribution lines, fire hydrants and service connections.

18 11. No other municipal or public service corporations provide water service in the
19 proposed service area described in Exhibit A.

20 12. The Company has provided Staff with copies of main extension agreements between
21 the developers of the two parcels and the Company. However, the exhibits detailing the related costs
22 remain to be filed for Staff approval. A portion of the total costs will be financed through refundable
23 advances from the developers of Cody Farms and Riverstone Estates.

24 13. The Company has previously provided Staff with an April 6, 2004 copy of its Utility
25 Services Operating Agreement with Peoria which includes the extension area described in Exhibit A
26 and authorizes Applicant to conduct operations in Peoria's public right of ways prior to obtaining a

27 ² The enforcement action relates to previous water quality monitoring/reporting deficiencies cited in an April 2004
28 MCESD Status Report. On October 18, 2004, the Company's attorney filed certification that payment has been made
pursuant to the terms of the stipulated order with MCESD.

1 franchise. Wastewater service will be provided by the City of Tolleson Wastewater District.

2 14. The Company will provide service to the extension area at its existing rates and
3 charges on file with the Commission.

4 15. The Company is current on the payment of its property and sales taxes, and is in
5 compliance with its filing requirements with the Commission.

6 16. According to the Staff Report, the Company is in full compliance with the rules of the
7 MCESD and is providing water which meets the requirements of the Safe Drinking Water Act and
8 the MCL requirements.

9 17. Staff believes that there is a public need and necessity for water service to the
10 requested extension area and that the approval of an extension to Applicant's Certificate is in the
11 public interest.

12 18. The Company has previously filed its Curtailment Plan with the Commission.

13 19. Staff is recommending that the Commission approve the Company's application
14 subject to the following conditions:

- 15 1) that the Company charge its existing rates and charges for the proposed
16 extension area;
- 17 2) that the Company file within 365 days of the effective date of this Decision,
18 with the Director, complete copies of main extension agreements with the
19 developers of the two subdivisions;
- 20 3) that the Company file, within 365 days of the effective date of this Decision,
21 with Docket Control, copies of the appropriate Certificate(s) of Approval to
22 Construct issued by ADEQ or its designee; and
- 23 4) that the Company file, with Docket Control, copies of the developers'
24 Certificate(s) of Assured Water Supply issued by ADEQ or its designee, where
25 applicable or when required by statute.

26 20. Staff further recommends that the Commission's approval of Applicant's request for
27 an extension of its Certificate be null and void without further Order by the Commission if Applicant
28 fails to meet the filing requirements set forth in the second and third conditions in Findings of Fact
No. 19 above.

21 21. Staff's recommendations in Findings of Fact Nos. 19 and 20 are reasonable.

CONCLUSIONS OF LAW

1
2 1. Applicant is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-252.

4 2. The Commission has jurisdiction over the Company and the subject matter of the
5 application.

6 3. Notice of the application was provided in accordance with the law.

7 4. There is a public need and necessity for water utility service in the proposed service
8 area described in Exhibit A.

9 5. Applicant is a fit and proper entity to receive an extension of its Certificate.

10 6. The application to extend the Certificate for the area described in Exhibit A should be
11 granted subject to the recommendations of Staff as set forth in Findings of Fact Nos. 19 and 20
12 above.

ORDER

13
14 IT IS THEREFORE ORDERED that the application of New River Utility Company for an
15 extension of its Certificate of Convenience and Necessity for the operation of a water utility in the
16 area more fully described in Exhibit A be, and is hereby approved, provided that New River Utility
17 Company complies with the conditions as set forth in Findings of Fact No. 19 hereinabove.

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IT IS FURTHER ORDERED that the authorization for the extension of the Certificate of Convenience and Necessity of New River Utility Company described hereinabove shall be null and void, without further Order by the Commission if the filing requirements as set forth in Findings of Fact No. 19 are not timely met.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2004.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

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SERVICE LIST FOR: NEW RIVER UTILITY COMPANY

DOCKET NO. W-01737A-04-0502

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Legal Description Cody Farms

**FIRST AMENDED
NO. 265-940-1235330**

**The West half of the Southwest quarter of the Northwest quarter of the Northeast quarter of
Section 23, Township 4 North, Range 1 East of the Gila and Salt River Base and Meridian,
Maricopa County, Arizona**

LEGAL DESCRIPTION OF RIVERSTONE ESTATES

PARCEL NO. 4:

THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 4 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

EXCEPT THE EAST 25.00 FEET THEREOF; AND

EXCEPT ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS AS RESERVED IN PATENT FROM THE UNITED STATES OF AMERICA RECORDED APRIL 22, 1959 IN DOCKET 2835, PAGE 562.

PARCEL NO. 12:

A PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 4 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 23;
THENCE SOUTH 00 DEGREES 12 MINUTES 46 SECONDS EAST (Record), SOUTH 00 DEGREES 09 MINUTES 34 SECONDS WEST (Record per plat recorded at Book 447, Page 31) ALONG THE MID-SECTION LINE, A DISTANCE OF 1318.75 FEET (Record), 1319.00 (Record per plat recorded Book 447, Page 31);
THENCE NORTH 89 DEGREES 24 MINUTES 42 SECONDS EAST (Record), NORTH 89 DEGREES 45 MINUTES 16 SECONDS EAST (Measured) A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING;
THENCE NORTH 89 DEGREES 24 MINUTES 41 SECONDS EAST (Record), NORTH 89 DEGREES 45 MINUTES 16 SECONDS EAST (Measured) A DISTANCE OF 1129.59 FEET (Record), 1129.64 FEET (Measured);
THENCE SOUTH 00 DEGREES 02 MINUTES 55 SECONDS EAST (Record), SOUTH 00 DEGREES 14 MINUTES 59 SECONDS WEST (Measured) A DISTANCE OF 1321.77 FEET (Record), 1321.33 FEET (Measured) TO THE EAST-WEST MID-SECTION LINE;
THENCE SOUTH 89 DEGREES 32 MINUTES 28 SECONDS WEST (Record), SOUTH 89 DEGREES 52 MINUTES 06 SECONDS WEST (Measured) ALONG THE SAID EAST-WEST MID-SECTION LINE, A DISTANCE OF 1125.79 FEET; (Record), 1126.74 FEET (Measured);
THENCE NORTH 00 DEGREES 12 MINUTES 46 SECONDS WEST (Record), NORTH 00 DEGREES 07 MINUTES 28 SECONDS EAST (Measured) A DISTANCE OF 1318.75 FEET (Record), 1319.07 FEET (Measured) TO THE TRUE POINT OF BEGINNING.

EXCEPT ALL OIL GAS AND OTHER HYDROCARBON SUBSTANCES, HELIUM OR OTHER SUBSTANCES OF A GASEOUS NATURE, GEOTHERMAL RESOURCES, COAL, METALS, MINERALS, FOSSILS, FERTILIZER OF EVERY NAME AND DESCRIPTION AND EXCEPT ALL MATERIALS WHICH MAY BE ESSENTIAL TO PRODUCTION OF FISSIONABLE MATERIAL AS RESERVED IN ARIZONA REVISED STATUTES; AND

EXCEPT COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 23; THENCE SOUTH 00 DEGREES 19 MINUTES 06 SECONDS WEST (Record), SOUTH 00 DEGREES 21 MINUTES 25 SECONDS WEST (Measured) AND ALONG THE EAST LINE OF SAID SECTION 23, A DISTANCE OF 1323.96 FEET (Record), 1323.985 FEET (Measured);

THENCE SOUTH 89 DEGREES 43 MINUTES 48 SECONDS WEST (Record), SOUTH 89 DEGREES 45 MINUTES 16 SECONDS WEST (Measured) AND ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 1329.18 FEET (Record), 1329.24 FEET (Measured);

THENCE SOUTH 00 DEGREES 12 MINUTES 32 SECONDS WEST (Record), SOUTH 00 DEGREES 14 MINUTES 59 SECONDS WEST (Measured) AND ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 314.79 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;

THENCE CONTINUING SOUTH 00 DEGREES 12 MINUTES 32 SECONDS WEST (Record), SOUTH 00 DEGREES 14 MINUTES 59 SECONDS WEST (Measured) AND ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 1006.97 FEET (Record), 1006.54 FEET (Measured);

THENCE SOUTH 89 DEGREES 49 MINUTES 58 SECONDS WEST (Record), SOUTH 89 DEGREES 52 MINUTES 06 SECONDS WEST (Measured) AND ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 447.31 FEET;

THENCE NORTH 08 DEGREES 11 MINUTES 03 SECONDS EAST (Record), NORTH 08 DEGREES 13 MINUTES 11 SECONDS EAST (Measured), A DISTANCE OF 204.01 FEET;

THENCE NORTH 27 DEGREES 54 MINUTES 52 SECONDS EAST (Record), NORTH 27 DEGREES 57 MINUTES 00 SECONDS EAST (Measured), A DISTANCE OF 392.55 FEET;

THENCE NORTH 27 DEGREES 49 MINUTES 08 SECONDS EAST (Record), NORTH 27 DEGREES 51 MINUTES 16 SECONDS EAST (Measured) A DISTANCE OF 367.28 FEET;

THENCE NORTH 26 DEGREES 22 MINUTES 30 SECONDS EAST (Record), NORTH 26 DEGREES 30 MINUTES 59 SECONDS EAST (Measured), A DISTANCE OF 150.27 FEET (Record), 149.93 FEET (Measured) TO THE TRUE POINT OF BEGINNING.

DECISION NO. _____